

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 7/26/2012

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Purchase and Sale Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Purchase and Sale Agreement between the City of Huntsville and Twickenham Square Venture, LLC ("Retail Space B" property).

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 7-26-12

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Purchase and Sale Agreement by and between the City of Huntsville and Twickenham Square Venture, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND TWICKENHAM SQUARE VENTURE, LLC ("RETAIL SPACE B" PROPERTY)," consisting of eighteen (18) pages including exhibits, and the date of July 26, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of July, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of July, 2012.

Mayor of the City of
Huntsville, Alabama

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**THE CITY OF HUNTSVILLE,
AN ALABAMA MUNICIPALITY**

AND

**TWICKENHAM SQUARE VENTURE, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

President of the City Council of the
City of Huntsville, Alabama
Date: _____

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- (b) Pay the HHA Payment to HHA in the amount and manner set forth in Section 2.2 hereof; and
 - (c) Execute and deliver to Seller the Parking Garage Retail Space Agreement.
- 4.3 **Closing Costs.** Seller shall be responsible for its own attorneys' fees in connection with the transactions contemplated herein, but shall not be responsible for any other costs in connection therewith. Purchaser shall pay all costs of obtaining the re-subdivision of the City Parking Garage Property in the manner contemplated in Section 1.2 hereof, all fees and charges for recording the Deed, and its own attorneys' fees.
- 4.4 **IRS Reporting.** If applicable, Seller and Purchaser each hereby designate Purchaser's counsel, as the "Reporting Person" as such term is utilized in Section 6045 of the Internal Revenue Code and the regulations promulgated thereunder. Seller agrees to provide the Reporting Person with such information as may be required for the Reporting Person to file a Form 1099 or other required form relative to the Closing with the Internal Revenue Service. A copy of the filed Form 1099 or other filed form shall be provided to Seller and Purchaser simultaneously with its being provided to the Internal Revenue Service.
- 4.5 **Default.**
 - 4.5.1 In the event of a default by Seller in the performance or observance of any of Seller's duties or obligations herein contained, and upon the failure of Seller to cure such default within fifteen (15) days following written notice from Purchaser, then Purchaser, at its option and as its sole and exclusive remedy at law and in equity, may (a) terminate this Agreement and thereafter this Agreement shall be of no further force and effect and the parties shall have no further rights, responsibilities or obligations hereunder (except those matters which are expressly stated herein to survive termination of this Agreement) or (b) Purchaser may pursue an action for specific performance which action must be commenced in a court of competent jurisdiction within sixty (60) days of Seller's default.
 - 4.5.2 In the event of a default by Purchaser in the performance or observance of any of Purchaser's duties or obligations herein contained, and upon the failure of Purchaser to cure such default within fifteen (15) days following written notice from Seller, then Seller, as its sole and exclusive remedy at law and in equity, may terminate this Agreement and thereafter this Agreement shall be of no further force and effect and the parties shall have no further rights, responsibilities or obligations hereunder (except those matters which are expressly stated herein to survive termination of this Agreement).

ARTICLE V
MISCELLANEOUS

- 5.1 **Entire Agreement.** This Agreement, contains the entire agreement of the parties hereto with respect to the purchase and sale of the Property. There are no other agreements, oral or written, with respect to the transaction contemplated hereby other than (a) the Development Agreement, (b) the Parking Garage Retail Space Agreement, and (c) the City Parking Garage Lease Agreement (Retail Project) dated as of July __, 2012. This Agreement can be amended only by a written agreement signed by both the parties hereto.
- 5.2 **Attorney's Fees.** In the event either party hereto is required to employ an attorney because of the other party's default, the defaulting party shall pay the non-defaulting party's reasonable attorney's fees incurred in the enforcement of this Agreement.
- 5.3 **Binding.** This Agreement and the terms, covenants and conditions herein contained inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties hereto.
- 5.4 **Notice.** Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Agreement to be made or accepted by either party must be in writing. Notice may, unless otherwise provided herein, be given or served by depositing the same in the United States mail, postage paid, registered or certified, and addressed to the party to be notified, with return receipt requested or by delivering the same to such party, or an agent of such party, or by delivery by overnight courier such as Federal Express, or by fax. Notice deposited in the mail in the manner hereinabove described shall be effective two (2) business days following such deposit. Notice by overnight courier, or fax shall be effective the day after it is sent. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Seller: City of Huntsville
 308 Fountain Circle
 Huntsville, AL 35801
 Attention: Peter S. Joffrion, City Attorney
 Facsimile: (256) 427-5043

Copy to: Samuel R. Kanter Esq.
 Bradley Arant Boult Cummings LLP
 One Federal Place
 1819 Fifth Avenue North
 Birmingham AL 35203
 Facsimile: (205) 521-8800

Seller: Twickenham Square Venture, LLC
c/o Twickenham Square Partners, LLC
9019 Overlook Boulevard, Suite C02
Brentwood, Tennessee 37067
Attn: Mr. Charles T. Carlisle
Facsimile: (615) 627-9450

Copy to: Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
Attn: Gail Livingston Mills
Facsimile: (205) 244-5681

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least three (3) days written notice to the other party.

- 5.5 **Time.** Time is of the essence in all things pertaining to the performance of this Agreement.
- 5.6 **Governing Law.** This Agreement is made and shall be construed in accordance with the laws of the State of Alabama.
- 5.7 **Section Headings.** The section headings contained in this Agreement are for convenience only and shall in no way engage or limit the scope or meaning of the various and several sections hereof.
- 5.8 **Business Days.** In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday in the City of Huntsville, Alabama, the applicable date or period shall be extended to the first business day following such Saturday, Sunday or legal holiday.
- 5.9 **Parties in Interest.** This Agreement is made solely for the benefit of the parties hereto and their respective permitted successors and assigns, and no other person will acquire or have any right under or by virtue of this Agreement or any Exhibit hereto.
- 5.10 **Assignment.** Neither party shall have the right to assign all or any portion of its rights or obligations hereunder to any third party, unless the prior written consent to such assignment is obtained, and any purported assignment hereunder without such prior written consent shall be void and of no effect whatsoever.
- 5.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one (1) and the same instrument.

**ARTICLE VI
REAL ESTATE COMMISSIONS**

- 6.1 **Commissions.** Each party hereby represents to the other that it has not contacted any agent, broker or other similar party with respect to the transactions contemplated by this Agreement. Purchaser and Seller each hereby agree to indemnify and hold the other harmless from the claims of any agent, broker or other similar party claiming by, through or under the indemnifying party.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Agreement has been duly executed in multiple counterparts (each of which is to be deemed an original for all purposes) by the parties hereto on the date appearing below each party's signature.

SELLER:

CITY OF HUNTSVILLE

By: _____
Name: _____
Title: _____
Date: _____

PURCHASER:

TWICKENHAM SQUARE VENTURE, LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"

DESCRIPTION OF PROPERTY

STATE OF ALABAMA
MADISON COUNTY

A LOT OR PARCEL OF LAND LOCATED IN THE NORTH 1/2 OF SECTION 1 TOWNSHIP 4 SOUTH, RANGE 1 WEST, CITY OF HUNTSVILLE, MADISON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 IN CAPPED IRON PIN (CA451LS) MARKING THE NORTHWEST CORNER OF LOT 4 OF TWICKENHAM SQUARE SUBDIVISION AS RECORDED IN DOCUMENT NUMBER 2012042700257150 AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY ALABAMA; THENCE NORTH 80 DEGREES 08 MINUTES 46 SECONDS EAST FOR A DISTANCE OF 63.16 FEET TO A POINT; THENCE SOUTH 09 DEGREES 51 MINUTES 00 SECONDS EAST FOR A DISTANCE OF 61.99 FEET TO A POINT; THENCE SOUTH 80 DEGREES 08 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 63.16 FEET TO A POINT; THENCE NORTH 09 DEGREES 51 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 61.99 FEET TO THE POINT-OF-BEGINNING. ALSO BEING LOT 4C OF THE PROPOSED RESUBDIVISION OF LOTS 4 AND 5 OF TWICKENHAM SQUARE SUBDIVISION.

SAID PARCEL CONTAINING 0.09 ACRES, MORE OR LESS.

SUBJECT TO: ANY EASEMENTS, RESTRICTIONS OR RIGHTS-OF-WAY WHICH MAY OR MAY NOT BE OF RECORD.

EXHIBIT "B"

FORM OF DEED TO PROPERTY

THIS INSTRUMENT PREPARED BY:

Gail Livingston Mills
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

SEND TAX NOTICE TO:

Twickenham Square Venture, LLC
325 Seaboard Lane
Suite 190
Franklin, Tennessee 37067

STATE OF ALABAMA)
MADISON COUNTY)

**STATUTORY WARRANTY DEED WITH RESERVATION
OF AIR SPACE AND EASEMENT FOR SUPPORT AND MAINTENANCE**

KNOW ALL MEN BY THESE PRESENTS: That in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the **City of Huntsville**, an Alabama municipality (the "Grantor"), in hand paid by **Twickenham Square Venture, LLC**, a Delaware limited liability company (the "Grantee"), the receipt and sufficiency of which are hereby acknowledged, Grantor does by these presents grant, bargain, sell and convey unto Grantee the real estate particularly described in Exhibit "1", attached hereto and made a part hereof, situated in Madison County, Alabama (the "Property"), subject to the matters described in Exhibit "2" attached hereto and made a part hereof.

I. Reservation of Air Space. Notwithstanding any provision to the contrary contained herein, Grantor hereby expressly reserves, for itself and its successors and assigns, all right, title and interest in and to all of the Property at and above the horizontal plane that is sixteen and one-half (16.5) linear feet above the ground level of the Property (herein, the "Air Space") for the purpose of constructing, operating, and maintaining a parking garage or other structure in the Air Space. The Air Space is subject to a right of reversion in favor of the Huntsville Housing Authority (together with its successors and assigns, "HHA") as is more particularly set forth in Exhibit B to that certain Statutory Warranty Deed from HHA to the City recorded in Book ____, Page ____ in the Office of the Judge of Probate of Madison County, Alabama (the "HHA/City Deed") with respect to an adjacent tract of land. Reversion in favor of HHA with respect to the Air Space and adjacent parcel shall occur on the Reversion Date of August __, 2111, unless the Grantor exercises its Purchase Option set forth in Section 6 of Exhibit B to the HHA/City Deed. Grantee, by its acceptance of this Deed, hereby acknowledges and agrees that upon reversion of the Air Space to HHA pursuant to the HHA/City Deed, HHA shall have the right, at any time after termination of the City Parking Garage Leases (as defined in the Development Agreement), to demolish the City Parking Garage, subject to compliance with applicable laws and regulations regarding demolition of improvements. Grantee, by its acceptance of this Deed, on behalf of itself and its successors and assigns, hereby grants to HHA, the license, right, and permission to demolish, at HHA's expense (for the demolition costs only with no obligation on the part of HHA to restore Grantee's improvements) that part of

Grantee's building located on the Property below the Air Space, provided that HHA shall have provided Grantee adequate notice of such demolition and an opportunity to remove any and all personal property prior to same, and provided further that HHA shall indemnify and hold Grantee harmless from any loss or damage caused to Grantee's adjacent properties and improvements and any injury to persons due to such demolition

II. Reservation of Easement for Support and Maintenance. Further notwithstanding any provision to the contrary contained herein, Grantor hereby expressly reserves, for itself and its successors and assigns, an easement and the right of support within the columns and other supports, footings and foundations which are necessary for the support of the parking garage or other structure to be located in the Air Space at the locations shown on the plans and specifications dated May 21, 2012 for the W.H. Councill Parking Deck, dated May 21, 2012, Sheet No. S201, a copy of which is attached as Exhibit "3," together with the right of entry upon and for ingress and egress through the Property with persons, men, materials and equipment reasonably necessary in the performance of any repairs, replacements, reconstruction or maintenance (collectively, the "Maintenance") to such columns and other supports, footings and foundations. In the event Grantor enters upon the Property for the purpose of performing Maintenance (a) Grantor agrees that it will use commercially reasonable efforts to minimize any disruption or disturbance to the Grantee's (or its tenants, customers and business invitees) operation of the Property and will work with the Grantee to schedule any exercise of its rights hereunder so as not to interfere with, disrupt, or disturb the Grantee (or its tenants, customers or business invitees) in its operation of the Property; and (b) Grantor, at its sole cost, shall repair all damage as a result of such Maintenance performed by Grantor and/or use of its easements hereunder and shall restore the Property to as near its preexisting condition prior to the performance of such construction of the Maintenance and/or use of its easements hereunder. The easement and right of support reserved by Grantor in this Deed shall be deemed to be an easement appurtenant to the Air Space and shall be deemed a part of the Air Space and shall run with the land and shall be binding upon the Grantee and shall inure to the benefit of Grantor, and its respective successors and assigns. After construction of the parking garage has been substantially completed, the location of all of the foregoing easements reserved shall be finally determined on an "as-built" survey prepared by a registered engineer or surveyor at the expense of the Grantee. In the event of any discrepancy or conflict between the location of such easements as shown on Exhibit 3 and on such survey, the survey shall govern and prevail. Grantee, by its acceptance of this Deed, covenants and agrees that it shall take no action which would adversely affect the structural safety or integrity of the parking garage or other improvements located in the Air Space or otherwise impair the rights reserved by Grantor herein.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

REMAINDER OF PAGE INTENTIONALLY DELETED

IN WITNESS WHEREOF, Grantor has caused this conveyance to be executed by its duly authorized officer this ____ day of _____, 2012.

GRANTOR:

CITY OF HUNTSVILLE

By: _____
Its Mayor

STATE OF ALABAMA)
MADISON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Thomas M. Battle, Jr., whose name as Mayor of the City of Huntsville, an Alabama municipality, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipality.

Given under my hand and official seal this ____ day of _____, 2012.

Notary Public
My Commission Expires: _____

GRANTEE:

TWICKENHAM SQUARE VENTURE, LLC

By: _____
Its: _____

STATE OF ALABAMA)
MADISON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Twickenham Square Venture, LLC, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, s/he, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this ____ day of _____, 2012.

Notary Public
My Commission Expires: _____

EXHIBIT "1"

[Lot 4C according to Plat of Twickenham Square Subdivision, recorded in Map Book ____, Page ____ in the Probate Office of Madison County, Alabama.]

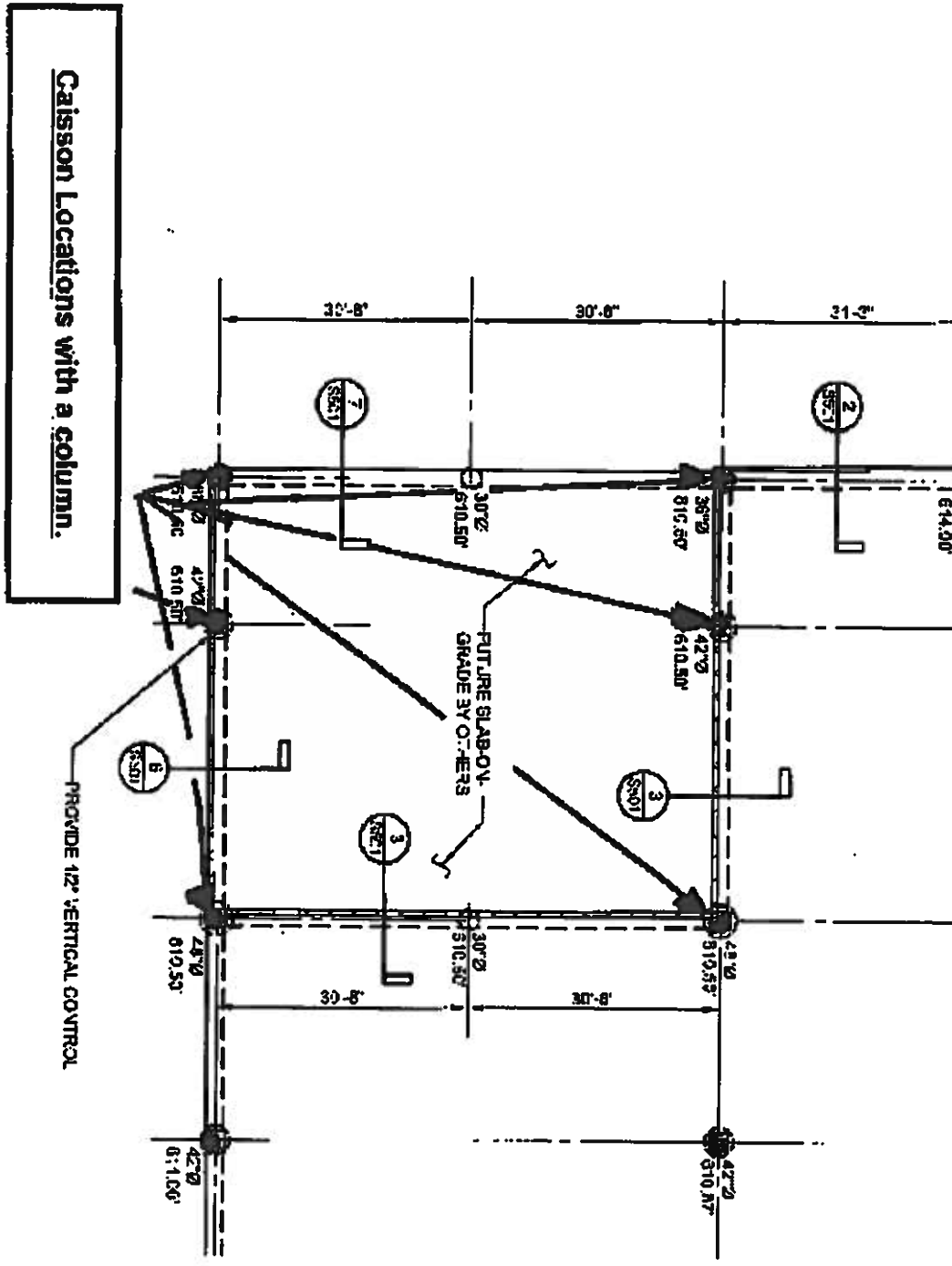
SAID PARCEL CONTAINING 0.09 ACRES, MORE OR LESS.

EXHIBIT "2"

[Title Exceptions]

EXHIBIT "3"

PLANS FOR SUPPORT COLUMNS



ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 7/26/2012

Department Contact: Peter Joffrion

Phone # 5026

Contract or Agreement: Purchase and Sale Agreement

Document Name: Purchase and Sale Agreement between the City of Huntsville and Twickenham Square...

City Obligation Amount: NA

Total Project Budget:

Uncommitted Account Balance:

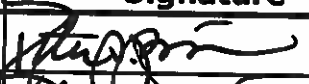

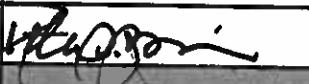
Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
------------------	------------------

Grant-Funded Agreements

<u>Select...</u>	Grant Name:
------------------	-------------

Department	Signature	Date
1) Originating		7-6-12
2) Legal		7-6-12
3) Finance		
4) Originating		7-6-12
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		